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RECENT CASES

ARSON—EVIDENCE—MOTIVE.—*STATE V. BARRETT*, 65 S. E. 894 (N. C.).—In a trial for the burning of a barn it was *held*, that the state could, to establish the motive of the accused, show that bad feelings existed between accused and the owner of the barn and the reason for it, and the owner may testify that he has opposed the accused's application to a membership in a society.

In general, where arson has been committed and circumstances point to the accused as the perpetrator, any facts tending to show a motive for the crime are admissible in evidence. *People v. Murphy*, 135 N. Y. 450. Unfriendly feelings between the accused and the owner of a building may be shown; *Shepherd v. People*, 19 N. Y. 537; but it is improper to inquire into the cause of the quarrel as it would tend to arouse a prejudice against the defendant. *State v. Hannett*, 54 Vt. 83. It has also been held improper to inquire into the unfriendliness of defendant's family with the prosecutor's wife to show motive. *Bell v. State*, 74 Ala. 420. However, the existence of friendly relations without reference to the time at which such feelings were entertained, cannot be shown to establish a want of motive. *Commonwealth v. Cornelly*, 7 Pa. Super. Ct. 77. And conversations may be admitted to show defendant's threats as to the future; *People v. Lattimore*, 86 Cal. 403; and notwithstanding the lapse of a long time between the acts of manifesting hostile relations and the commission of the offense, such difficulties may be shown to connect the person with the offense. *Hudson v. State*, 61 Ala. 333.

CONSTITUTIONAL LAW—PERSONAL LIBERTY—MEASUREMENT UNDER BERTILLON SYSTEM.—*DOWNS V. SWANN*, 73 ATL. 653 (Md.).—*Held*, that to photograph and measure under the Bertillon system a person arrested on a felony charge, but before conviction, does not violate the personal liberty secured him by the Constitution of the United States.

A sheriff may lawfully take photograph and measurements of an accused person if in his discretion it is necessary to prevent his escape. *State v. Chamberlain*, 154 Ind. 599. And a supposed criminal whose photograph has been taken by the police, cannot have an exhibition thereof enjoined on the ground that his right of privacy has been invaded. *Owen v. Partridge*, 82 N. Y. Supp. 248. Some of the courts hold that if a person is under arrest or within the court's jurisdiction, generally there arises no necessity for taking photograph of accused before his trial and conviction. *Schulman v. Whitaker*, 117 La. 703. And in conflict with the case at hand it has been held that the police department has no authority to take measurements. *Gow v. Bingham*, 107 N. Y. Supp. 1011.

CONSTITUTIONAL LAW—PERSONAL AND CIVIL RIGHTS—PROHIBITING RIGHT TO ENGAGE IN LAWFUL OCCUPATION—COLLECTION OF GARBAGE.—*SMITH ET AL V. CITY OF SPOKANE*, 104 PAC. 249 (WASH.).—*Held*, that an

ordinance creating a city crematory for garbage, and making the collection of same by those not its officers unlawful, falls within the police power, and does not deny the constitutional right to engage in a lawful occupation.

The police power, or authority to make those rules which tend to protect the health, life, and safety of the people, extends to every relation in the state. *Cooley's Const. Law*, 3rd ed., pp. 250, 251. The courts are the final judges of this power. *Mugler v. Kansas*, 123 U. S. 623; *In re Jacobs*, 98 N. Y. 98. Everything prejudicial to the health or morals of a city may be removed. *Thurlow v. Commonwealth*, 5 How. 504, 571. Cities may prohibit peddling of certain kinds. *Shelton v. City of Mobile*, 30 Ala. 540. But the attempt of a government to appropriate any industry not of a public nature is an invasion of constitutional rights. *Herman v. State*, 8 Ind. 545.

CONTRACTS—BUILDING CONTRACTS—WAIVER OF BREACH.—*RYAN V. CURLEW CO.*, 104 PAC. 218 (UTAH).—*Held*, that the fact that the contractee in a building contract specifying the manner in which the work should be done, made no objections as the work proceeded, did not preclude him from asserting, when sued for the contract price, that the work had not been done in accordance with the contract.

Mere knowledge of a breach of contract does not constitute a waiver but there must be a formal release. *Pope Mfg. Co. v. Rubber Goods Mfg. Co.*, 97 N. Y. Supp. 73. But it has been held that objection that work was not satisfactory comes too late if not made till after work was done. *Lyons v. Dymond*, 23 La. Ann. 709. This rule has been followed on ground that failure to reject defective construction amounts to a waiver. *Ashland Lime Co. v. Shores*, 105 Wis. 122. Some courts hold that an amount necessary to make the work such as contract calls for may be deducted from the contract price. *Katz v. Belford*, 77 Cal. 319.

CORPORATIONS—NUISANCE—LIABILITY TO PRIVATE INDIVIDUALS.—*PICKENS V. COAL RIVER BOOM & TIMBER CO.*, 65 S. E. 865 (W. VA.).—*Held*, that a state charter giving a corporation power to do work which would otherwise be a nuisance, absolves the corporation from any liability as a public nuisance, but does not exempt it from liability for damages to an individual. *Williams, J., dissenting.*

A corporation acting under a charter giving it a power to do a public act is not liable for injuries to property rights of individuals. *Bailey v. Philadelphia, W. & B. R. Co.*, 44 Am. Dec. 593. Nor is a corporation responsible for the disturbance or injury to a franchise of another corporation if it exercises its powers in a manner contemplated by its charter. *Bordentown & Turnpike Road Co. v. Camden & A. Railroad & Transportation Co.*, 17 N. J. Law 314. But this is not so if it has in some way forfeited its charter rights or the charter has been rightfully modified by some statute. *Gowen v. Penobscot R. Co.*, 44 Me. 140. Nor does the charter afford any protection to those acting under it, if it is